

MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45th Street, Suite 6151A  
Davie, Florida 33314  
(954) 584-9770

## TOWN ATTORNEY REPORT

DATE: March 13, 2002  
FROM: Monroe D. Kiar  
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out. The Town Attorney's Office confirmed with the Administration on March 13, 2002, that its negotiations as to the terms of an agreement with URS are still ongoing and that there is still some terms to be worked out.
2. **Ordonez, et al v. Town of Davie:** As indicated in earlier reports to the Town Council, this matter went to trial and the jury returned a zero verdict for the Plaintiffs. Mr. Burke filed a Motion to Tax Costs and Attorney's Fees against the Plaintiffs and the Court entered a Judgment in favor of the Town of Davie against the Plaintiffs in the amount of \$6,514.34. Since the Florida League of Cities advanced all costs and attorney's fees in this matter, it will seek to recover upon the Judgment from the Plaintiffs directly. From my discussions this date with the League of Cities attorney, it appears that it is his belief the Florida League of Cities will not be seeking reimbursement from the Plaintiffs for the \$6,514.34 in costs and attorney's fees which it expended in this matter.
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** Judge Cocalis has reached a decision regarding these two consolidated cases. It is Mr. Burke's understanding that the Judge has granted the Plaintiff's Writ of Certiorari. He indicates that his office only today, received a copy of the proposed Order prepared by the Plaintiff's attorney and that it is being reviewed by his office. It is anticipated that it will be signed by the Judge sometime next week. Upon completion of his review of the signed Order, Mr. Burke will then provide to the Town his evaluation as to what further course of action the Town should take, including possibly appealing this matter to the 4<sup>th</sup> District Court of Appeals.

4. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11<sup>th</sup> Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. Oral argument on the Appeal filed by MVP Properties, Inc. was heard on February 1, 2002, at the Federal Courthouse in Miami, Florida. The 11<sup>th</sup> Circuit Court of Appeals affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. Mr. Burke further advises that a Judgment for Costs has been obtained against MVP Properties, Inc. and he has written to the attorney for MVP Properties, Inc. requesting that same be paid forthwith.
5. **Town of Davie v. Malka:** The Town Attorney's Office has spoken with the new Building Official, Mr. Curtis Craig. Mr. Craig has again confirmed that the exterior of the home is now complete. The home was painted, all construction debris removed and the tile roof completed. The completion of the exterior has been the principal goal of the Town Council, Code Enforcement Division, the Town Attorney's Office, the Building Department and the residents of the community. Mr. Craig has further indicated that the owner has commenced completion of the interior which consists of a living room addition, and is in the process of working on the underground wiring. He will also be completing the mechanical aspects of the improvement and thereafter, installing the installation and drywall. The Building Department has kept close contact with this property owner to insure proper completion of all additions to the structure, both exterior and interior.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The last rule promulgated by the Department of Agriculture was successfully challenged by Broward County and the coalition of cities before the Department of Administrative Hearings. The Department of Agriculture is appealing that ruling. In the meantime, the Department of Agriculture has promulgated a new rule and the coalition of cities, including Davie, has filed a rule challenge to this new rule. The trial on this challenge was initially scheduled to be heard in Pompano Beach in the latter part of January, 2002. The coalition commenced discovery procedures, but the Department has failed to properly produce all requested discovery and has filed a Motion seeking a Protective Order relieving it of its requirement to produce the Department's documents and discovery needed by the coalition. Accordingly, the trial has been rescheduled until April, 2002. The Department of Agriculture has filed another Motion to Disqualify the DOAH Judge again alleging bias. The first Motion to Disqualify was denied and it is anticipated that the second filed by the Department will also be denied. Recently, a Bill was filed with the State Legislature by supporters of the Department of Agriculture and apparently, the citrus industry, to extend the powers of the Florida Department of Agriculture and Consumer Services relevant to the Citrus Canker matter. This Bill would allow the Department far greater powers and far reaching powers than currently exist. Additionally, Judge Fleet entered an Order in the Circuit Court case relevant to the inverse condemnation proceeding, to stay that case for a period of 30 days until after the First District Court of

Appeal's ruling on Judge Van Laningham's decision on the original rule challenge. The Town Attorney as well as the other attorneys for the other municipalities has been advised by the County that it is anticipated that the Bill filed with the State Legislature is expected to pass and will be signed into law any day by the Governor. Once law, it is anticipated that the Department of Agriculture will resume cutting all exposed trees within the 1900 foot radius of an infected tree immediately. The County Attorney has indicated that the County anticipates filing a lawsuit to enjoin the Department of Agriculture from initiating the cutting of such trees in the 4<sup>th</sup> District Court of Appeals and has requested from the attorneys representing the various municipalities that they each determine from their respective municipality if it wishes to join in with the County in such a lawsuit. The County Attorney is seeking as many cities as possible to join in as co-plaintiffs in such a lawsuit.

7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside attorney assigned by the Florida League of Cities in this case, and was advised today that he will shortly be filing a Motion to Dismiss the lawsuit for lack of prosecution, as the Plaintiff has failed to take any action in this matter for many months. It is anticipated that such a Motion will be filed on or about April 1, 2002.
8. **Reinfeld v. Town of Davie, et al:** The parties are in the midst of conducting considerable discovery. The deposition of the Plaintiff was taken and based upon the contents of that deposition, Mr. Burke has filed a Motion with the Court seeking the entry of a Summary Judgment in favor of the Town and against the Plaintiff Reinfeld. Mr. Marrero, the Florida League of Cities attorney assigned to represent Defendant Weiner, has also filed a Motion for Summary Judgment on behalf of his client. Both attorneys have expressed confidence that their Motions will be granted by the Court. Both Motions are now pending. Additional depositions have been scheduled by the parties to be taken in the future. Lastly, a mediation session was held on March 7, 2002, but an impasse was reached.
9. **Spur Road Property:** The Town Attorney was in contact with Mr. Burke this date regarding this matter. As indicated in previous reports, Mr. Burke appeared in Tallahassee before the Division of Administrative Hearings arguing the Town's protest of the Department of Transportation's award of the property to the highest bidder. The Division of Administrative Hearings however, ruled against the Town of Davie's protest and recommended to the Department of Transportation that they accept the bid of the highest bidder. A final Order in fact has been so entered by the Department of Transportation adopting the recommendation of the Judge for the Division of Administrative Hearings. Mr. Burke appeared at the last Council Meeting and apprised the Town Council of these facts and the Council authorized Mr. Burke to proceed and take an appeal of the final Order that was entered against the Town.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum

exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The Judge assigned to this case is Judge Charles M. Greene, a well respected Judge of the 17<sup>th</sup> Judicial Circuit of Broward County. Recently, depositions were taken of the treating physician as well as the doctor hired by the Plaintiff's PIP carrier, to conduct an independent medical examination of the Plaintiff. Our outside legal counsel was pleased with the depositions and pleased with the testimony presented by the Board Certified Orthopaedic Surgeon, Dr. Stein, who conducted the independent medical examination for the PIP carrier, which was eventually utilized to terminate the Plaintiff's PIP benefits.

11. **Cummings v. Town of Davie:** The Stipulated Final Judgment jointly prepared by the Town Attorney's Office and the attorney for the Plaintiffs was submitted to the Court and signed by Judge Streitfeld on January 17, 2002. Pursuant to the terms of the Stipulation, the sums set forth in paragraphs 1 through 3 which total \$50,500.00, were paid to the Plaintiff within the thirty (30) days of the entry of the Court's Order as required. Simultaneously with payment of the \$50,500.00, the original Quit Claim Deed executed by Mr. and Mrs. Cummings was presented to the Town Attorney's Office. The Town Attorney's Office in turn, sent the original Quit Claim Deed to the Administration for recording and proper handling. The Town Council at the last Council Meeting by Resolution, accepted the Quit Claim Deed and once the Quit Claim Deed has been recorded by the Town Clerk, the Town Attorney has requested that a copy be sent to the Town Attorney's Office so that it in turn, may transmit a copy to the attorney for Mr. and Mrs. Cummings. The Town now owns the land upon which our sidewalk was built several years ago. After receipt from the Town Clerk of a copy of the recorded Deed and its transmittal to the attorney for Mr. and Mrs. Cummings, the Town Attorney's Office will close its file on this case.
12. **Proposed Sidewalk in Front of Foster Home:** As indicated previously in earlier Litigation Reports, the Fosters contend that the sidewalk was constructed on a portion of their property. The Town of course, disputes this. Nevertheless, the Fosters have indicated through their legal counsel, that in an effort to resolve the matter, they are willing to donate a permanent easement to the Town of Davie for the purposes of constructing the sidewalk. The Fosters are requiring that the Town of Davie pay all costs related to the conveyance of the permanent easement, including, but not limited to, preparation of the conveyance documents, that they be permitted to retain an engineering expert to review Davie's proposed construction plans of the sidewalk, and that the Town pay the reasonable costs of the engineers hired by the Fosters, that the legal descriptions of the areas to be conveyed to the Town be prepared by McLaughlin Engineering at no cost to the Fosters, and that Davie will pay the Fosters' attorney's fees relating to this matter, and that in the event that donation of a permanent easement to Davie results in the necessity for either the Fosters or subsequent purchasers of the property to seek a variance from the Town of Davie, then there shall not be any administrative costs or filing fees for the variance process to the Fosters or a subsequent purchaser. The Town Attorney's Office has been advised that the attorney's fees incurred to date by the Fosters are approximately \$1,500.00. The Public Works Department is currently working with the Fosters and their engineer, Arnold Ramos, and therefore, it is expected that completion of the sidewalk that is in dispute should be fulfilled in the very near future. The Town Attorney's Office has been advised that the total costs involved fall within the discretionary authority of the Administration. It appears that an amicable settlement of the dispute between the Fosters and the Town has in fact been reached, thus preventing a lawsuit similar to the Cummings v.

Town of Davie case which was initiated under a prior Administration and prior Town Attorney.